

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

)	
D. W. CLARK, INC.,)	
)	
Plaintiff)	
)	
v.)	CIVIL ACTION
)	NO.
)	
CLARKE INDUSTRIAL)	
ENGINEERING, INC.,)	
)	
Defendant.)	
)	

VERIFIED COMPLAINT

Introduction

This is an action by the Plaintiff, D. W. Clark, Inc., a casting and metals manufacturing business, against the Defendant, Clarke Industrial Engineering, Inc., a control valve manufacturer, for breaching a manufacturing contract between the parties, which breach includes refusing to pay for past due accounts receivable, and for work already in process after the Defendant's abrupt cancellation of certain orders.

Parties and Jurisdiction

1. The Plaintiff, D. W. Clark, Inc. (“D.W. Clark”), is a Massachusetts corporation, with its principal office located at 692 North Bedford Street, East Bridgewater, Massachusetts 02333.

2. The Defendant, Defendant Clarke Industrial Engineering, Inc. (“Clarke Valve”), is a Delaware corporation, with its principal office located at 42 Whitecap Drive, North Kingston, Rhode Island 02852. Its Registered Agent in Rhode Island is CT Corporation System,

Veterans Memorial Parkway, East Providence, Rhode Island 02914. It has a fictitious name registered with the Rhode Island Secretary of State as “Clarke Valve”.

3. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332(a) because this action involves claims between parties of diverse citizenship, and the amount in controversy, as pled by the Plaintiff, exceeds \$75,000.00.

4. Venue in this District is proper pursuant to 28 U.S.C. §1391(b) in that one of the parties resides here and a substantial part of the events giving rise to the Plaintiff’s claims occurred here.

FACTS

5. Founded in 1902, D. W. Clark is a casting and metals manufacturing business that has been serving its customers and continually innovating with advancing applications, and the technologies castings support. It works closely with customers from prototype stage to production runs to emergency shortages.

6. D. W. Clark uses traditional sand molding and 3D mold printing to provide castings in a wide range of metal alloys, tailored to customer specified designs.

7. Clarke Valve, a control valve manufacturer, became a customer of D. W. Clark in 2018 and quickly grew to an average annual volume of \$360,000.

8. Clarke Valve’s customers include operators of oil fields, refineries, chemical plants, and related facilities. Clarke Valve’s owners and investors are comprised of corporate users of its products, as well as venture capital firms.

9. D. W. Clark has had many years of experience and demonstrated capability for producing custom castings for industry and national security, energy infrastructure, renewable energy, nuclear power plants, U.S. Department of Defense, and aerospace users, as well as other

sophisticated and complicated facilities, across a broad spectrum of applications, part geometries, and requirements.

10. D.W. Clark custom cast the valve bodies of specific alloys, shapes, and sizes, tailored to the needs of Clarke Valve, for their specific applications. The orders were highly varied in type and size and manufactured to Clarke Valve's designs to be used only for each specific order.

11. Throughout the years, communication between D.W. Clark and Clarke Valve was cordial, and payments were made as per quoted terms and conditions.

12. Returns for re-work were limited to less than 1% of the unit volume, which is substantially better than industry averages for build-to-order, low-volume castings.

13. In early March, 2023, Clarke Valve, in a series of emails and phone calls, abruptly notified D. W. Clark to stop work on four open Purchase Orders which it had placed, and stated further that it would cease payments on both past due accounts payable and for the work in progress.

14. The canceled orders were all either completed and awaiting shipment or in the final stages of completion. The accumulated costs to D.W. Clark for this order to cease production totals approximately \$200,000.

15. All of the work manufactured by D.W. Clark for Clarke Valve is built-to-order, specific to Clarke's Purchase Orders, and is of no use to other customers of D.W. Clark.

16. When it abruptly cancelled its four open Purchase Orders and ceased payments on both accounts payable and for the work in process, Clarke Valve relied upon the following language in a Purchase Order to justify its conduct: "5. TERMINATION Buyer may terminate the Purchase Order for its convenience, in whole or in part, at any time prior to shipment (by

written or electronic) notice to Seller. Upon such receipt of such termination notice, Seller shall promptly comply with the directions contained in such notice and shall as required, take action necessary to terminate the work as provided in the notice, minimizing costs and liabilities for the terminated work, and continue the performance of any part of the work not terminated by Buyer.”

17. There is nothing in this clause which justifies Clarke Valve’s ceasing of payments on previous accounts payable and/or for work in-process that was contracted to be performed.

18. In addition, D.W. Clark produced the work which Clark Valve cancelled pursuant to a Quote which was accepted by Clark Valve and states: “I. CANCELLATIONS – Cancellations of orders or changes in quantities are to be made only by the mutual consent of the buyer and the seller. In the event of any cancellations of orders or changes in the pattern equipment after the work is in progress process, the customer will be charged for any castings produced and for the costs of cores or molds that have to be discarded.”

19. Clarke Valve’s conduct constitutes a breach of contract under either D.W. Clark’s Quote or Clarke Valve’s Purchase Order.

20. At this time, D.W. Clark has \$24,908.43 in unpaid invoices for undisputed products that shipped prior to the recent cancellation; invoices amounting to \$112,943.51 for work in-process due to the cancelled orders; \$13,217.22 in material surcharges; and \$51,084 incurred from development work on the Purchase Orders that Clarke Valve cancelled.

21. D.W. Clark has suffered \$202,153.16 in damages as a result of Clark Valve’s breach of contract.

RELIEF REQUESTED

The Plaintiff, D. W. Clark, Inc., hereby requests this Court to grant it the following relief:

1. Enter a judgment in its favor against the Defendant, Clarke Industrial Engineering, Inc., in the amount of \$202,153.16 plus interest and costs.
2. Enter a judgment in its favor against the Defendant, Clarke Industrial Engineering, Inc., granting it such and other and further relief as this Court deems just and reasonable.

JURY DEMAND

The Plaintiff hereby demands a trial by jury on all claims or issues so triable.

THE PLAINTIFF

By its Attorney,

/s/ Isaac H. Peres

Isaac H. Peres (BBO# 545149)

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VERIFICATION

I, Jeffrey B. Burek, Vice President of D.W. Clark, Inc., declare under the pains and penalties of perjury that I have read this Verified Complaint, that all the facts stated herein are true and accurate, and based upon facts of which I have personal knowledge including my communications with representatives of said Defendant.

Handwritten signature of Jeffrey B. Burek in black ink.

/s/ Jeffrey B. Burek
Jeffrey B. Burek

DATED: March 10, 2023